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No. _____

IN THE

Supreme Court of the United States

APRIL TERM, 1995

SEAN JONES, *et al.*,

Petitioners,

v.

REGGIE WHITE, *et al.*,

Respondents;

NATIONAL FOOTBALL LEAGUE, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eighth Circuit

APPENDIX FOR PETITION FOR WRIT OF CERTIORARI
VOLUME II OF IV

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The proposed amendments also focus on the restructuring of the rules and practices governing player employment. Five of the six proposed amendments modify provisions of the Settlement Agreement that concern structural changes to the NFL arising from the injunctive relief afforded to class members. See infra Section IV (detailing proposed amendments). As previously discussed, none of the proposed amendments affect the monetary relief provided pursuant to the terms of the original Stipulation and Settlement Agreement. See supra P 1.1; White, 822 F.Supp. PP 4.9-4.10, at 1414-15 (summarizing terms of monetary settlement). The proposed amendments thus provide further support for the court's determination that class members' claims for injunctive relief predominate over the claims for monetary damages.

3.3 In the order of April 30, 1993, the court also determined that opt-out rights are not constitutionally required in cases where sufficient alternative procedural safeguards have been employed. Id. P 3.4, at 1411-12; see Williams v. Burlington Northern, Inc., 832 F.2d 100, 104 (7th Cir.1987) (although plaintiff did not have the right to opt out, court "provided [plaintiff] with the equivalent due process protection that would be accorded to a Rule (23)(b)(3) class member"), cert. denied, 485 U.S. 991, 108 S.Ct. 1298, 99 L.Ed.2d 508 (1988); cf. Robertson v. National Basketball Ass'n, 556 F.2d 682, 685-86 (2d Cir.1977) (discussing due process rights of mandatory class members prior to Shutts). Although absent class members

do not have the right to opt out, the court concluded that the requirements of due process had been satisfied for purposes of approving the original Stipulation and Settlement Agreement because class members had been: (1) adequately represented by the named plaintiffs; (2) adequately represented by capable and experienced class counsel; (3) provided with adequate notice of the proposed settlement; (4) given an opportunity to object to the settlement; and (5) assured that the settlement will not be approved unless the court, after analyzing the facts and law of the case and considering all objections to the proposed settlement, determines it to be fair, reasonable and adequate. Id. P 3.4, at 1412 (citing Williams, 832 F.2d at 104; Nottingham Partners v. Dana, 564 A.2d 1089, 1100-01 (Del.1989)).

Examining those factors, the court determines that absent class members have again been adequately represented by named plaintiffs and class counsel, see supra s II, have been afforded adequate notice of the pending motions and have been given a meaningful opportunity to object to the motions. See supra s I. In addition, the court has followed the same procedure in assessing the fairness, reasonableness and adequacy of the amended Settlement Agreement and the requested factual findings. Finally, the court has agreed to retain jurisdiction over this action during the express term of the Settlement Agreement, and thus the court will be in a position to ensure that all class members' interests will be protected throughout the life of the settlement. See White, 822 F.Supp. at 1437. The court

therefore concludes that class members' due process rights have been satisfied for purposes of evaluating the present motions, and the final approval of the amended Settlement Agreement.

3.4 Various persons object to the pending motions because the proposed amendments do not alter the Settlement Agreement to provide them with the right to opt out of the White class. For the reasons set forth above and in its opinion of April 30, 1993, the court reaffirms that due process does not require that absent class members be afforded an opportunity to opt out of the White class settlement. See id. s III, at 1410-12. Accordingly, the court overrules any objections to the certification of a mandatory class.

IV. SUMMARY OF THE PROPOSED AMENDMENTS TO THE STIPULATION SETTLEMENT AGREEMENT [FN32]

FN32. For a summary of the terms of the original Stipulation and Settlement Agreement, see White, 822 F.Supp. s IV, at 1412-16.

A. Amendments Concerning Structural Relief

4.1 Free Agency. Proposed Amendment No. 1 modifies the veteran free agency rules concerning Franchise and Transition Players.

(a) Franchise Player Provisions

Under the original version of the Stipulation and

Settlement Agreement, a team was permitted to designate one Franchise Player per year by tendering an offer of a one year contract at a salary amounting to the greater of: (1) the average of the salaries from the prior season of the five highest paid players at the designated player's same position; or (2) a twenty percent increase in the designated player's previous year's salary. [FN33] See White, 822 F.Supp. P 4.1(d), at 1413 (detailing Franchise Player provisions under original Settlement Agreement).

FN33. A team thereby obtained exclusive negotiating rights to the Franchise Player, notwithstanding his years of experience.

Under the proposed amendment, any 1993 Franchise Player who had not signed a player contract as of June 14, 1993, had to receive one of the following tenders on June 15, 1993: (1) an upgraded tender for the average of the five largest 1993 salaries for players at his position as of May 6, 1993; or (2) the tender previously provided under the original Settlement Agreement, but in that event the Franchise Player became free to negotiate a player contract with any club subject to a right of first refusal and draft choice compensation of two first round draft picks.

A 1993 Franchise Player will continue to have the right to receive a tender of 120 percent of his prior year's salary, with all other terms of his prior year's contract, including any guarantees and any incentive or performance

bonuses, if he so wishes. If a club withdraws its required tender entirely, as before, a 1993 Franchise Player will be completely free to negotiate and sign a player contract with any club without any right of first refusal for his prior club, or any signing period.

In future years of the Settlement Agreement, any player who is designated as a Franchise Player will receive one of two potential tenders under the proposed amendment: (1) an upgraded tender for the average of the five largest salaries for players at his position as of the last day of the Restricted Player signing period for that year (which is approximately May 1, 1994, for 1994 Franchise Players); or (2) a tender for the average of the five largest salaries for players at his position as of the prior year, but in that event the player will be free to negotiate a player contract with any club subject to a right of first refusal and draft choice compensation of two first round draft picks.

In future years of the Settlement Agreement, a Franchise Player will continue to have the right to receive a tender of 120 percent of his prior year's salary, with all other terms of his prior year contract, including any guarantees and any incentive or performance bonuses, if he so wishes. As before, if a club withdraws its required tender entirely, a Franchise Player will be completely free to negotiate and sign a player contract with any club without any right of first refusal for his prior club, or any signing period.

(b) Transition Player Provisions

Under the original version of the Settlement Agreement, in the first year of the Agreement, each team was permitted to designate two Transition Players by tendering an offer of a one year contract at a salary amounting to the greater of (1) the average of the salaries of the ten highest paid players at the designated player's same position, or (2) a twenty percent increase in the designated player's previous year's salary. [FN34] See White, 822 F.Supp. P 4.1(e), at 1413 (summarizing Transition Player provisions under the original Settlement Agreement).

FN34. A team thereby obtained a right of first refusal with respect to the Transition Player, notwithstanding his years of experience. In both the second and final year of the Settlement Agreement, each team may designate one Transition Player. See White, 822 F.Supp. P 4.1(e), at 1413.

Under the proposed amendment, any 1993 Transition Player who had not signed a player contract as of June 14, 1993, was to receive either an upgraded tender for the average of the ten highest 1993 salaries for players at his position as of May 6, 1993, or, if he did not receive the upgraded tender, the player became free to negotiate a player contract with any club without any right of first refusal for his prior club.

A 1993 Transition Player will continue to have the right to receive a tender of 120 percent of his prior year's

salary, with all other terms of his prior year's contract, including any guarantees and any incentive or performance bonuses, if he so wishes. As under the original version of the Settlement Agreement, if a club withdraws its required tender entirely, a 1993 Transition Player will be completely free to negotiate and sign a player contract with any club without any right of first refusal for his prior club, or any signing period.

4.2 College Draft. The proposed amendments related to expansion, as set forth in Proposed Amendment No. 2, modify Article IV of the Stipulation and Settlement Agreement, the College Draft provision, to provide that any expansion club may be allocated additional special draft selections in the drafts held prior to each of the first three seasons in which the expansion club will participate in regular league play, up to a maximum of one additional special draft selection for each expansion club in each round of the draft in each such year.

4.3 Entering Player Pool. Under the proposed amendments to the Stipulation and Settlement Agreement, the entering player pool, and the rookie allocation for each expansion team, will be increased to account for the additional special draft selections that may be allocated to expansion teams. See supra P 4.2 (noting additional draft selections provided).

4.4 Salary Cap. Various amendments will impact the Salary Cap provisions of the Settlement Agreement. See White, 822 F.Supp. PP 4.3-4.5, at 1413-14 (summarizing

Salary Cap provisions under the original Settlement Agreement). Proposed Amendment No. 4 involves a technical change in the mechanism for making adjustments to the Salary Cap in the event that player benefits unexpectedly increase as a percentage of Defined Gross Revenues at a time when the Salary Cap is in effect. Under the terms of the new Collective Bargaining Agreement, the NFLPA has a right to: (1) contest the NFL's Projected Benefits Costs, see Collective Bargaining Agreement, art. XLVI, s 4 (May 6, 1993); and (2) reduce player benefit payments to a level not less than seven percent of Projected Defined Gross Revenues. Id. s 1. This proposed amendment provides for an immediate increase in the amount of money available under the Salary Cap for players' salaries in the event that projected benefits costs are reduced pursuant to the terms of the new Collective Bargaining Agreement.

As a result of the settlement in the licensing litigation, [FN35] under Proposed Amendment No. 6, the calculation of Defined Gross Revenues in the Settlement Agreement may be reduced by up to $5 million per year to reflect payments that the NFLPA might receive from the NFL defendants over the next seven years. See infra P 4.9 (setting forth details of this amendment).

FN35. See White, 822 F.Supp. P 4.13, at 1415-16 (detailing licensing litigation); infra note 37 (listing the licensing cases).

Proposed Amendment No. 2 will modify the Settlement Agreement so that any bonuses that are paid to veteran players drafted by expansion clubs will not be counted under the Salary Cap. See infra P 4.6 (detailing expansion club bonuses for veteran players).

B. Monetary Relief

4.5 The proposed amendments to the Stipulation and Settlement Agreement do not change the monetary relief provided to class members under the terms of the original agreement. See White, 822 F.Supp. PP 4.9-4.10, at 1414-15 (summarizing terms of monetary relief provided under the original Stipulation and Settlement Agreement).

C. Expansion Related Amendments

4.6 Other amendments, referred to collectively as Proposed Amendment No. 2, relate to NFL expansion. First, each expansion club may be allocated additional special draft selections in the drafts held prior to each of the first three seasons in which the expansion clubs will participate in regular league play, up to a maximum of one additional special draft selection for each expansion club in each round of the draft in each such year. See supra P 4.2. Second, the entering player pool, and the rookie allocation for each expansion team, will be increased to account for these additional special draft selections. See supra P 4.3. Third, the Collective Bargaining Agreement provides that each veteran player drafted by an expansion club will receive a relocation bonus of between $10,000 and $25,000. Collective Bargaining Agreement, art. XXXI, s 4. Under

the proposed amendments to the Settlement Agreement, such bonuses will not be counted under the Salary Cap. See supra P 4.4.

D. Proposed Amendment to Clarify Offer Sheet Terms

4.7 Proposed Amendment No. 3 clarifies the rules concerning what type of conditional, that is variable or calculable, salary a club must match in order to retain a player subject to a right of first refusal. The amendment specifically sets forth what types of conditional salary must be matched, thereby resolving the uncertainty created by a recent arbitration decision. [FN36]

FN36. An arbitrator recently determined that an offer sheet extended to Transition Player Will Wolford, which conditioned his salary on the salary paid to the highest paid offensive player on the offering team, with certain exceptions, was within the definition of "Principal Terms" under the original Settlement Agreement. Accordingly, that offer had to be matched by Mr. Wolford's former team, the Buffalo Bills, even though matching the offer might cost the Bills more than the new team. The arbitrator also indicated that his written opinion, which has not yet been issued, would make clear what other types of conditional salary might not, under certain circumstances, constitute Principal Terms of an offer sheet. That decision created uncertainty about the interpretation of the offer sheet provisions in the original Settlement Agreement.

E. Proposed Amendment Concerning the NFL's Right to Terminate the Settlement Agreement

4.8 Proposed Amendment No. 5 extends the NFL's right to terminate the Settlement Agreement in the event that players fail to ratify a new collective bargaining agreement in the period between the date on which the court enters the final consent judgment, and the end of the 1993 NFL season.

F. Proposed Amendment to Change the Calculation of Defined Gross Revenues as a Result of the Settlement of the Licensing Litigation

4.9 At the time the court granted final approval to the original Settlement Agreement, various cases involving licensing rights were also in the process of being settled. [FN37] Since that time, the parties have reached a final settlement of those cases, under which the NFLPA is to receive at least $5 million a year over the next seven years in additional licensing revenues. As part of that agreement, the calculation of Defined Gross Revenues under the present Settlement Agreement is to be altered, pursuant to Proposed Amendment No. 6, to allow a reduction of up to $5 million a year to reflect any such payments made by defendants, thereby avoiding a situation where defendants would be forced to pay those revenues twice.

FN37. In one of the cases, NFLPA v. NFL Properties, Inc., No. 90-CV-4244 (S.D.N.Y.), the NFLPA sought damages for antitrust violations and tortious

interference with existing NFLPA group licensing authorizations. Other licensing cases were to be settled in the context of the global settlement, including: NFLPA v. Roby, Case No. 92-09092(15) (Cir.Ct.Broward Cty.Fla.); NFLPA v. Carrier, Case No. 92 CH 3281 (Cir.Ct.Cook Cty.Ill.); NFLPA v. Fulcher, Case No. 92-CI-00604 (Kenton Cir.Ct.Ky.); NFLPA v. Clayborn, Docket No. 92-00984 (Norfolk Sup.Ct.Mass.); NFLPA v. Golic, Docket No. C123-92 (Sup.Ct.Bergen Cty.N.J.); NFL Properties, Inc. v. Hi-Pro Marketing, No. 92 Civ. 1456, 1992 WL 204370 (S.D.N.Y.); and Aikman v. AAA Sports, No. 92 Civ. 1457, 1992 WL 204397 (S.D.N.Y.). See White, 822 F.Supp. P 4.13, at 1415-16 & n. 35.

V. STANDARD FOR COURT EVALUATION OF THE AMENDED VERSION OF THE STIPULATION AND SETTLEMENT AGREEMENT AND THE REQUESTED FINDINGS

5.1 The court has evaluated the amended version of the Stipulation and Settlement Agreement and the requested factual findings using the same standard by which it evaluated the original Stipulation and Settlement Agreement. See White, 822 F.Supp. s V, at 1416-17; see also Bridgeman v. National Basketball Ass'n, Civ. No. 87-4001, Transcript at 13 (D.N.J. Sept. 24, 1990) (analyzing whether proposed amendment to the Bridgeman professional basketball settlement agreement "should be approved as fair, reasonable and adequate").

5.2 As the court noted in its order of April 30, 1993: The policy in federal court favoring the voluntary resolution of litigation through settlement is particularly strong in the class action context. White, 822 F.Supp. P 5.1, at 1416 (citing Armstrong v. Board of Sch. Directors, 616 F.2d 305, 312-13 (7th Cir.1980); Holden v. Burlington Northern, Inc., 665 F.Supp. 1398, 1405 (D.Minn.1987)).

5.3 Notwithstanding that policy, Federal Rule of Civil Procedure 23(e) provides that a class action may not be dismissed or compromised without court approval. Under Rule 23(e), the district court has a duty to protect the rights of both absent class members and the named plaintiffs. Grunin, 513 F.2d at 123; Welsch v. Gardebring, 667 F.Supp. 1284, 1289 (D.Minn.1987); 7B Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure s 1797, at 340 (2d ed. 1986) ("the purpose of [Rule 23(e)] is to protect the nonparty members of the class from unjust or unfair settlements affecting their rights").

5.4 The evaluation of a class action settlement is committed to the district court's discretion, and will not be overturned except on a showing that the district court clearly abused its discretion. See, e.g., Wiener v. Roth, 791 F.2d 661, 662 (8th Cir.1986) (per curiam); Reynolds, 584 F.2d at 283; Grunin, 513 F.2d at 123; cf. In re Drexel Burnham Lambert Group, Inc., 960 F.2d 285, 292 (2d Cir.1992) (although appellate court "will ordinarily defer to a district court's approval of a class action settlement unless

there is a 'clear showing' that the district court abused its discretion.... [w]here ... the district court simultaneously certifies a class and approves a settlement [the appellate court] will more rigorously scrutinize the district court's analysis of the fairness, reasonableness and adequacy of both the negotiation process and the proposed settlement"), cert. dismissed, --- U.S. ----, 113 S.Ct. 1070, 122 L.Ed.2d 497 (1993).

Great weight is accorded the district court's views because the judge: 'is exposed to the litigants, and their strategies, positions and proofs. [The district court judge] is aware of the expense and possible legal bars to success. Simply stated, [the district court judge] is on the firing line and can evaluate the action accordingly.' Reynolds, 584 F.2d at 283 (quoting Grunin, 513 F.2d at 123 (quotation omitted)).

5.5 In making such an evaluation, the district court's primary responsibility is to ensure that the settlement is "fair, reasonable, and adequate." Van Horn v. Trickey, 840 F.2d 604, 606 (8th Cir.1988) (citing Grunin, 513 F.2d at 123); In re Flight Transp. Corp. Sec. Litig., 730 F.2d 1128, 1135 (8th Cir.1984), cert. denied, 469 U.S. 1207, 105 S.Ct. 1169, 84 L.Ed.2d 320 (1985).

5.6 When assessing the fairness, reasonableness and adequacy of the proposed settlement, the court is to examine various factors, the most important of which is the strength of plaintiffs' case on the merits balanced against the benefits to the class provided by the settlement. Van Horn, 840

F.2d at 607; Grunin, 513 F.2d at 124; Holden, 665 F.Supp. at 1407. Other important factors include: 1) the opinions of the participants, including class counsel, class representatives, and class members; 2) the complexity, expense, and likely duration of further litigation; 3) the extent of discovery completed and the stage of the proceedings; and 4) the evidence, if any, that the proposed settlement is the product of fraud and collusion. Holden, 665 F.Supp. at 1407 (citations omitted); accord Armstrong, 616 F.2d at 314; Grunin, 513 F.2d at 124; Welsch, 667 F.Supp. at 1290.

5.7 Moreover, in its evaluation of the class settlement; the court does not have the responsibility of trying the case or ruling on the merits of the matters resolved by agreement. Alexander, 1977-2 Trade Cas. (CCH) P 61,370, at 72,993, 1977 WL 1497, at * 12. Rather, " 'the very purpose of compromise is to avoid the delay and expense of such a trial.' " Id. (quoting Grunin, 513 F.2d at 124).

VI. THE AMENDED STIPULATION AND SETTLEMENT AGREEMENT IS FAIR, REASONABLE AND ADEQUATE

The court will apply the standard set forth in Section V to evaluate the pending motions.

A. The Strengths of Plaintiffs' Case Balanced Against the Benefits of the Settlement

6.1 In weighing the strength of plaintiffs' case against the benefits provided by the amended Settlement

Agreement, the court is not required: to balance the scales with the nicety of an apothecary. The very object of compromise 'is to avoid the determination of sharply contested and dubious issues.' Alexander, 1977-2 Trade Cas. (CCH) P 61,730, at 72,993, 1977 WL 1497, at * 12 (quoting Young v. Katz, 447 F.2d 431, 433 (5th Cir.1971)). The court's analysis generally will not go beyond "an amalgam of delicate balancing, gross approximations, and rough justice." Welsch, 667 F.Supp. at 1290 (quoting City of Detroit v. Grinnell Corp., 495 F.2d 448, 468 (2d Cir.1974)).

6.2 The Risks of Further Litigation. The court concluded in its order of April 30, 1993 that players face numerous risks in going forward with the present litigation, [FN38] including:

FN38. See White, 822 F.Supp. P 6.2, at 1417-18.

(a) The Risk of an Appeal in McNeil

Despite the McNeil verdict, defendants' liability for the imposition of the right of first refusal/compensation rules of Plan B is still subject to appeal, and defendants have indicated their intent to appeal the McNeil verdict on a number of grounds, including the applicability of the nonstatutory labor exemption, defendants' alleged incapacity as a "single entity" to enter into an antitrust conspiracy, the proper application of the rule of reason under Section 1 of the Sherman Act, and the "fact of injury" element of

liability in a private antitrust action.

Should the McNeil judgment be overturned on one or more of those grounds, players would at best be faced with the prospect of retrying, at great expense and after substantial delay, the issue of liability. At worst, if defendants were to prevail on certain issues, such as the nonstatutory labor exemption or the single entity defense, players might be entirely precluded from establishing liability.

Because the McNeil verdict involved only the right of first refusal/compensation rules of Plan B, players would face the additional risk of establishing defendants' liability concerning other challenged restraints, most significantly the college draft and the league's preseason pay policies, with the latter claims burdened by pending counterclaims for substantial sums.

(b) The Difficulty of Establishing Monetary Damages

Even if such liability were established, the McNeil verdict demonstrates that the class members would face substantial obstacles and uncertainties in proving damages. Evaluating the same type of damage issues presented here, the McNeil jury awarded no damages to four of the eight plaintiffs, and the four other plaintiffs received far less than they had sought, despite plaintiffs proffering substantial evidence in support of their damage claims. [FN39] Cf. Kapp v. National Football League, 586 F.2d 644, 648 (9th Cir.1978) (player asserting multimillion dollar claim failed to prove that challenged restraint caused any damages).

FN39. The following is a comparison of the damages that plaintiffs' expert, Michael Glassman, calculated for the McNeil plaintiffs versus the actual damages awarded by the jury:

Plaintiff	Actual Damages*	Estimated Damages Plan B Model	USFL Yardstick
Mark Collins	$178,000	$ 396,000	$ 387,000
Don Majkowski	0	1,366,000	1,338,000
Tim McDonald	0	681,000	668,000
Freeman McNeil	0	399,000	383,000
Frank Minnifield	50,000	425,000	410,000
Niko Noga	0	190,000	184,000
Dave Richards	240,000	480,000	473,000
Lee Rouson	75,000	100,000	97,000
TOTAL	$543,000	$4,037,000	$3,940,000

*Before trebling.

White, 822 F.Supp. at 1418 n. 37.

In its order of April 30, 1993, the court also observed that plaintiffs'

actual experience in McNeil undermines the expert opinion concerning

damages proffered by various objectors. Id.

Finally, after presiding over the McNeil trial, the court notes that one cannot discount the reluctance of a jury to award damages to professional football players, who are readily perceived as successful, highly paid individuals. See Alexander, 1977-2 Trade Cas. P 61,730, at 72,995, 1977 WL 1497, at *16 (damages uncertain because there was "no assurances that class members' claims would be sympathetically viewed by the jury"); Robertson v. National Basketball Ass'n, 72 F.R.D. 64, 69 (S.D.N.Y.1976) (noting the difficulty of trying to convince a jury that professional basketball players, who already earned substantial salaries, should be paid more money).

(c) The Uncertain Scope of Any Injunctive Relief

Even if it were conclusively established that all of the player rules challenged in the present class action violate the antitrust laws, it is uncertain what scope of injunctive relief would be provided to players. If the present case is not settled, players will likely face further litigation concerning the "reasonableness" of some other modified player reservation system adopted by defendants. [FN40]

FN40. As the court observed in its April 30, 1993 order: In McNeil and Jackson, defendants made perfectly clear their intent to impose Plan C, Plan D and so on, until one passed muster. White, 822 F.Supp. at 1418 n. 38.

6.3 The Benefits to the Class. In its order of April 30, 1993, the court determined that the terms of the original Stipulation and Settlement provided class members with substantial benefits, including: (a) A radically modified player reservation system that affords substantial unrestricted free agency for veteran players, and ensures that almost every player with at least five years of experience (four, if a salary cap is in place) will, on contract expiration, have the opportunity to offer his services to other teams. [FN41]

FN41. See White, 822 F.Supp. P 4.1, at 1412-13 (detailing free agency provisions under original Settlement Agreement).

(b) Higher tender requirements before a club can place any restrictions on a player's mobility. For example, in order to invoke the narrow exceptions for Franchise and Transition players, clubs must tender very substantial offers to players, thereby making those players among the highest paid in professional football. (c) Lesser restrictions on players subject to the free agency limitations. (d) A decrease in the number of rookie players subject to the college draft. [FN42]

FN42. Id. P 4.2, at 1413 (detailing college draft provisions).

(e) Substantial league-wide and team minimum guarantees that are to be paid to players in the event a salary cap goes into effect. [FN43]

FN43. Id. P 4.4, at 1414 (describing various guarantees).

(f) Strict anti-collusion provisions with an expedited and comprehensive enforcement mechanism to deter and punish any collusion by defendants. [FN44]

FN44. Id. P 4.7, at 1414 (discussing anti-collusion provisions).

(g) Settlement payments to White class members totalling $115 million. [FN45]

FN45. See id. P 4.10, at 1414-15 (setting forth details of settlement payments).

White, 822 F.Supp. P 6.3, at 1418-20.

The court further noted that players' marketplace experience after the implementation of the player movement rules set forth in the original Settlement Agreement confirmed the substantial benefits to the White class. Id. P 6.4, at 1420.

Since the court's order of April 30, 1993, marketplace evidence further demonstrates the substantial

benefits to class members. For example, the average per year salaries of players who have signed contracts since March 1, 1993, when the new player movement rules first went into effect, have more than doubled, and now exceed $1 million per year. See Affidavit of Jeffrey L. Kessler P 3 (July 1, 1993) (hereinafter "Kessler Aff."). [FN46] As of June 23, 1993, 241 players had entered into new contracts with NFL teams for the 1993 season, 189 of whom were unrestricted players, and 52 were restricted free agents. The average per year salary of those players rose from $469,452 under their prior contracts to over $1,001,257 under their new contracts, an increase of more than 110%. Id. Both restricted and unrestricted free agents have received enormous salary increases, with the per year average salary for unrestricted free agents increasing 102%; per year average salaries for restricted agents increased 185%. Id.

FN46. At the hearing on July 7, 1993, counsel for Wilber Marshall orally moved to strike Mr. Kessler's affidavit of July 1, 1993, on the ground that the affidavit addresses the adequacy of the Settlement Agreement as a whole rather than the proposed amendments thereto. Transcript of Final Fairness Hearing on the Pending Motions at 94-96 (July 7, 1993). As discussed more fully infra, the court is not to review the amendments in isolation but must evaluate the Agreement as a whole. See infra P 7.10. The court therefore denies the motion to strike Mr.

Kessler's affidavit.

In addition, unprecedented player movement continues under the new free agency system. Over 100 players have switched clubs as unrestricted free agents. [FN47] Since March 1, 1993, twenty-one restricted free agents have received offers from other teams, and seven of them have changed employers. Kessler Aff. P 6. Those figures represent a significant improvement over the experience of players restricted under Plan B: during the four years in which Plan B was in effect, only three restricted players received an offer from a competing team, and not one player actually changed teams. Id.; White, 822 F.Supp. at 1427 n. 61 (noting that Plan B effectively prevented any movement by players who were restricted under the Plan).

FN47. Of the 189 unrestricted free agents who have entered into new contracts, 105 have signed with new teams, and 84 have resigned with their former teams. Kessler Aff. P 5.

6.4 Examining the proposed amendments to the Settlement Agreement and the requested factual findings, the court finds that the changes, as a whole, provide substantial additional benefits to class members.

(a) Proposed Amendment No. 1: The Franchise and Transition Player Rules

The first proposed amendment will benefit class members by significantly liberalizing the Franchise and Transition Player rules. See Declaration of Jeffrey L. Kessler PP 6-9 (May 13, 1993) (hereinafter "Kessler Decl."). For players subject to those designations for the current year, the amendment provides that any 1993 Franchise Player who had not signed a player contract as of June 14, 1993, had to receive one of the following tenders on June 15: (1) an upgraded tender of the average of the five highest 1993 salaries for players at his position as of May 6, 1993 (instead of the five highest salaries for the previous season, as provided for under the original version of the Franchise Player rules); or (2) the tender previously required under the original Settlement Agreement, but in that event the player became free to negotiate a player contract with any club, subject to a right of first refusal and draft choice compensation of two first round draft picks (instead of the blanket prohibition against Franchise Player movement under the original version of the rules).

Any 1993 Transition Player who had not signed a player contract as of June 14, 1993, was to receive either an upgraded tender for the average of the ten highest 1993 salaries for players at his position as of May 6, 1993 (instead of the ten highest salaries for the previous season, as provided for under the original version of the Transition Player rules), or, if he did not receive the upgraded tender, the player became free to negotiate a player contract with any club without any right of first refusal for his prior club.

In addition, 1993 Franchise and Transition Players continue to have the right to receive a tender of 120% of their prior year's salary, with all other terms of their prior year's contract, including any guarantees and incentive or performance bonuses. As before, if any of the foregoing tenders is withdrawn, the player will be completely free to negotiate with any team.

Thus, under the first proposed amendment, 1993 Franchise and Transition Players will benefit, either by receiving an upgraded tender reflecting the increased salaries that other players have obtained this year as a result of the introduction of free agency into the marketplace [FN48], or by having greater freedom to negotiate with other clubs.

FN48. This change renders moot any objection that the 1993 Franchise Players will be deprived of any increase in the marketplace for the current year, and will always be one year behind other players for purposes of participating in market-wide salary increases. See White, 822 F.Supp. P 7.13, at 1427 & n. 60 (discussing objection more fully).

In future years of the Settlement Agreement, players who are designated as Franchise Players will similarly benefit under the proposed amendment, either by receiving upgraded tenders or new opportunities to market their services to other teams subject to a right of first refusal and draft choice compensation. See supra P 4.1(a) (detailing

provision as it applies to future years).

The marketplace evidence confirms that Transition and Franchise Players have benefitted significantly under the new free agency system. Of the seventeen designated Transition Players, six signed contracts before June 15, 1993, at a per year average salary increase of over 275%. Kessler Aff. P 7. As a result of the foregoing amendment, eight of the remaining 11 players received increased tenders on June 15, 1993 (based on the average of the top ten salaries at their positions as of May 6, 1993) which guarantee them, on average, a minimum salary increase of 140%. With the exception of kickers and punters, those tenders range from $1,031,917 to $3,574,500. Id.

The Transition Players who did not receive increased tenders as of June 15, 1993, became unrestricted free agents. Two of those players, Michael Brooks and Carl Banks, have signed contracts with new NFL teams, and their yearly averages are significantly greater than the original tenders required for Transition Players at those positions. Id. P 8. For example, Mr. Brooks' new contract represents an average yearly salary increase of 190%. Id.

Recent marketplace evidence also confirms that Franchise Players will benefit by receiving significant salary increases. For example, Wilber Marshall, an objector and the Washington Redskins' designated Franchise Player, recently signed a one year contract with the Houston Oilers for the 1993 season, under which he is to receive a salary of $2.75 million, plus an agreement that the Oilers will not

designate him as a Franchise Player for the 1994 season. Kessler Aff. PP 9-10 & Exh. B; see also Transcript of Final Fairness Hearing on the Pending Motions at 14-15 (July 7, 1993). The Washington Redskins have agreed to pay Mr. Marshall an additional $150,000. Kessler Aff. P 9 & Exh. B. Mr. Marshall's ability to obtain a contract with a new team at a salary more than $1 million greater than his required tender as a Franchise Player confirms the court's prior conclusion, in its order of April 30, 1993, that the "required tenders act merely as a floor and not a ceiling on the designated player's salary." White, 822 F.Supp. P 7.13, at 1427. [FN49]

FN49. An affidavit of class counsel also states that one of the objectors: James "Jumbo" Elliott, an offensive tackle who was designated by the New York Giants as their Franchise Player, received a minimum tender of $1,167,500, which is 91% more than his previous year's salary of $612,000. Supplemental Affidavit of James W. Quinn P 13 (Apr. 12, 1993) (hereinafter "Quinn Supp.Aff."). The affidavit further states that another Franchise Player and objector, Steve Young, is expected: to negotiate a new contract paying him $4 to $5 million per year, even though the required tender at his position (quarterback) is $3,264,000. Id. P 14 (citations omitted).

Based on the foregoing, the court concludes that the proposed amendment concerning the Franchise and

Transition Player rules confers significant additional benefits upon the White class.

(b) Proposed Amendment No. 2: Changes Related to Future NFL Expansion

The court also determines that the proposed amendments concerning expansion, which permit an increase in the number of draft choices for expansion teams and a modification of the Salary Cap, are highly beneficial to class members. The amendments will facilitate expansion, thereby providing more than one hundred new jobs for college and other players. The amendments also benefit class members by modifying the Salary Cap and entering player pool rules to provide more money for drafted and veteran players whose rights are acquired by expansion teams. Kessler Decl. PP 10-12.

(c) Proposed Amendment No. 3: Offer Sheet Clarifications

This amendment clarifies the types of conditional salary in an offer sheet that a player's prior team must match in order to retain that player subject to a right of first refusal. The amendment does not prohibit any type of conditional salary provisions. At the present time, it is unclear whether the change will affect most offer sheets. The court determines that the proposed amendment benefits the class because it resolves the uncertainty created by the Wolford arbitration. See id. P 16; supra note 36. Thus, at the very least, the proposed amendment obviates the need for numerous future arbitrations, prevents additional

uncertainty and delay, and possibly improves the efficiency of the offer sheet process.

(d) Proposed Amendment No. 4: Adjustments in the Salary Cap For Changes in Projected Benefits

This amendment provides a mechanism for making adjustments in the Salary Cap in the event that projected player benefit costs unexpectedly increase as a percent of Defined Gross Revenues at a time when the Salary Cap is in effect. To protect class members, the amendment permits an adjustment in the Salary Cap so that the "Projected Benefits" figure, on which the Salary Cap and Minimum Team Salary are based, may be immediately recalculated to reflect any change in Projected Benefits. The court finds that this amendment clearly benefits class members by preventing increases in benefit costs from holding down the Salary Cap (which takes such projected benefit cost increases into account) to levels that are detrimental to the class. Id. P 18.

(e) Proposed Amendment No. 5: Defendants' Right to Terminate the Settlement Agreement

This amendment provides defendants with the right to terminate the Settlement Agreement in the event that players failed to ratify a new collective bargaining agreement. The amendment will have no impact on class members because the parties reached agreement on a new Collective Bargaining Agreement on May 6, 1993, and the players ratified the new Agreement as of June 18, 1993.

(f) Proposed Amendment No. 6: Concerning the

Calculation of Defined Gross Revenues as a Result of the Settlement of the Licensing Litigation

This amendment permits a reduction of up to $5 million a year in the calculation of Defined Gross Revenues to reflect the amount that defendants may be required to pay to the NFLPA pursuant to the terms of the settlement of the licensing litigation. This amendment also benefits class members. First, the increased revenues will benefit NFL players by helping to fund the NFLPA's settlement administration and collective bargaining operations, with the remainder of the funds to be distributed directly to NFL players for their individual benefit. Allen Supp. Decl. P 12. Second, while NFL players get the full benefit of the $5 million in increased licensing revenues that the NFLPA will receive each year for the next seven years, the Salary Cap (which is based on Defined Gross Revenues) will not be imposed either this year or in 1999, and may not be in effect for some or all of the five years in between. As a result, players will receive a guaranteed benefit of $35 million over the next seven years under Proposed Amendment No. 6, but at most, only $14,500,000 (58% of $25 million, assuming that the Salary Cap is in effect for all five years) will be deducted as an offset from the league-wide salary guarantees. Thus, this amendment produces a net benefit to players of more than $20 million dollars. Kessler Decl. P 23.

6.5 The court finds that the requested findings concerning the scope and applicability of the nonstatutory

labor exemption also benefit the class by providing labor and litigation peace during the term of the Settlement Agreement. See infra Section X (detailing requested findings).

B. Class Counsel and Class Members Believe that the Amended Stipulation and Settlement Agreement is Fair, Reasonable and Adequate

6.6 When seeking approval of the original Stipulation and Settlement Agreement, class counsel submitted declarations stating their belief that the settlement, as originally proposed, was in the best interests of the class. White, 822 F.Supp. P 6.9, at 1420-21 (citing declarations of James W. Quinn and Edward M. Glennon). In its order of April 30, 1993, the court found that class counsel are experienced and competent, and that class counsel and the named plaintiffs adequately represent the White class. White, 822 F.Supp. PP 2.12-2.21, at 1404-07. The court further noted that: As representatives of the plaintiffs in the Powell and McNeil cases, class counsel have been intimately involved in the entire five-year history of related lawsuits which culminated in the present settlement. The court therefore affords considerable weight to the opinion of experienced and competent counsel that is based on their informed understanding of the legal and factual issues involved. White, 822 F.Supp. P 6.9, at 1420-21; see Armstrong, 616 F.2d at 325 ("[w]hile the court ... should not abdicate its responsibility to review a class action settlement merely because counsel support it, the court is

entitled to rely heavily on the opinion of competent counsel"); Welsch, 667 F.Supp. at 1295 (the court is to give "great weight to ... the judgment of experienced counsel"). Accordingly, the court gives great weight to class counsel's opinion, as set forth in the declaration of Jeffrey L. Kessler, that the amended Settlement Agreement and the requested findings are reasonable, fair, provide substantial additional benefits to the class and are in the best interests of the class. Kessler Decl. P 4.

6.7 The overall favorable response of the named plaintiffs and other class members to both the original settlement, and the pending motions, strongly supports the settlement of this action. After extensive notice by mail and publication, out of a class of more than 5,000 members, only eighty-nine college and professional players objected to the terms of the original Settlement Agreement; [FN50] only twenty-eight of the original objectors, and no new objectors, filed objections to the proposed amendments and requested findings. See supra note 20 (listing objectors to the pending motions).

FN50. See White, 822 F.Supp. at 1397-98 & nn. 11-12.

Moreover, ninety-six percent of the players who voted supported the ratification of the new Collective Bargaining Agreement, which virtually mirrors the terms of the player movement rules set forth in the amended version

of the Settlement Agreement. [FN51] That ratification eliminates any doubt regarding the players' position, and demonstrates that the amended Settlement Agreement is overwhelmingly supported by NFL players.

FN51. As previously noted, players ratified the new Collective Bargaining Agreement by a vote of 788 to 34. Allen Supp.Decl. P 2.

C. Complexity, Expense and Likely Duration of Further Litigation

6.8 As the court found in its order of April 30, 1993, "[c]ontinued litigation of the present action would be complex, expensive and protracted" because: (a) an appeal in McNeil, which would likely be lengthy and present complex and novel legal issues, may affect or even preclude a finding of liability; [FN52]

FN52. Those issues include: the applicability of the nonstatutory labor exemption, defendants' alleged incapacity as a "single entity" to enter into an antitrust conspiracy, the proper application of the rule of reason under Section 1 of the Sherman Act, and the "fact of injury" element of liability in a private antitrust action. White, 822 F.Supp. P 6.2(a), at 1418.

(b) additional liability issues ... would have to be tried, including the legality of the college draft and the issue

of preseason pay; (c) there exist complex issues concerning injunctive relief; and (d) players would be faced with the difficulty in proving damages arising from the imposition of various player rules. [FN53]

FN53. The courts that approved the settlements of the analogous Alexander and Robertson cases both noted that proof of damages in cases such as this can be extremely time-consuming and costly. Alexander, 1977-2 Trade Cas. (CCH) P 61,730, at 72,995, 1977 WL 1497, at *15 (trial of damages issues would be "lengthy, costly and almost overwhelming"); Robertson, 72 F.R.D. at 70. In addition, "[p]laintiffs' experience in McNeil underscores the problems in proving such damages." See White, 822 F.Supp. P 6.8, at 1420.

See White, 822 F.Supp. P 6.2, at 1417-18.

D. The Extent of Discovery Completed and the State of the Proceedings

6.9 The extent of discovery completed and the stage of the proceedings at which settlement is reached are important factors because they are indicative of the court and counsel's ability to evaluate the merits of plaintiffs' claims. Armstrong, 616 F.2d at 325; Welsch, 667 F.Supp. at 1297. Although White is technically in its early stages, the court and class counsel's evaluation of the merits of plaintiffs' claims is necessarily informed by the comprehensive records compiled in the prior player lawsuits

involving similar or identical issues. Just as the Alexander court was able to evaluate the propriety of the proposed class action in light of its experience in the Mackey case, here the McNeil case, which after years of discovery and a three-month trial has been litigated through verdict, provides a sound basis on which to evaluate the strengths and weaknesses of plaintiffs' claims and the merits of the settlement as amended. See White, P 6.12, at 1421.

E. The Original Settlement Agreement, the Proposed Changes and the Requested Factual Findings are the Product of Arm's Length Negotiations

6.10 This court previously found that: The proposed settlement is the culmination of over five years of hard fought litigation in which NFL players, represented by class counsel, challenged the legality of the NFL player reservation system. White, 822 F.Supp. P 6.13, at 1421 (citing Robertson v. National Basketball Ass'n, 389 F.Supp. 867, 899 (D.C.N.Y.1975) ("[t]he four-year history of this litigation is sufficient indication that the named plaintiffs and their counsel will fairly and adequately protect the interests of the class")). The court observed that: [D]uring the course of the litigation, the court presided over various related cases and participated in the final stages of the settlement negotiations. As a result of its involvement, the court is aware that the settlement was not reached easily, but represents the product of long and difficult negotiations, conducted in good faith and at arm's length by experienced and able attorneys. Id. (citations omitted). In making that

determination, the court relied on the following factors: the size and complexity of the [Settlement] Agreement and the compromises reflected therein; the context in which it was reached, that is, after five and one-half years of frequently acrimonious litigation; the court's personal knowledge of the negotiators and the tenacity with which they struggled to protect their principals' interests; and the need for the court's involvement in the final stages of the negotiations. Id. The court finally relied on its determination that the terms of the original Stipulation and Settlement Agreement are fair, reasonable and adequate to the class because in such circumstances, the court may presume that the negotiations were proper. Id. (citing Bowling v. Pfizer, Inc., 143 F.R.D. 141, 152 (S.D.Ohio 1992) (citation omitted)); see also White, Transcript of Preliminary Approval Hearing for the Original Settlement Agreement at 82-84 (Feb. 26, 1993) (finding no evidence of collusion and concluding settlement was product of arm's length negotiations).

After the parties reached agreement on the terms of the original Stipulation and Settlement Agreement, class counsel and the NFLPA, in the course of negotiating the terms of the new Collective Bargaining Agreement, were able to obtain further concessions from the NFL which afford substantial additional benefits to the class. See supra P 6.4 (setting forth those benefits). The court finds that the proposed amendments, which reflect those concessions, further demonstrate that the settlement is the product of

arm's length negotiations.

VII. THE CLAIMS OF THE OBJECTORS DO NOT WARRANT DISAPPROVAL OF THE AMENDED SETTLEMENT AGREEMENT

7.1 Objections to the pending motions were filed on behalf of twenty-eight players who had previously objected to the original Stipulation and Settlement Agreement. [FN54] In addition, one NFL member club, the Philadelphia Eagles, has objected to the motions. Section VII of this opinion will address the substantive objections to the motions to amend the Settlement Agreement, and to approve the amended Settlement Agreement. [FN55] Objections to the motion for further factual findings will be discussed in Section X of the opinion.

FN54. See supra note 20 (listing those objectors, and also the twenty- seven players who objected at the preliminary hearing, but failed to subsequently object or appear at the final settlement hearing on July 7, 1993).

FN55. Objections to the adequacy of notice and the certification of a mandatory class are discussed supra. See ss I-III. Objections to the court's jurisdiction are discussed infra. See ss XI-XII.

A. Player Objections to the Motions to Amend and Approve the Settlement Agreement

7.2 When evaluating the objections to the original

Settlement Agreement in the order of April 30, 1993, the court first observed that claims of inadequacy by some class members are entitled to little weight in situations where the "vast preponderance of the class members" do not oppose the terms of a settlement. White, 822 F.Supp. P 7.2, at 1425 (quoting City of Detroit v. Grinnell Corp., 495 F.2d 448, 462 (2d Cir.1974)); cf. Van Horn, 840 F.2d at 606 ("class settlement may be approved over significant percentage of objections from class members"). In any given year, the NFL employs approximately 1,500 players during the course of the regular season, and employs hundreds of additional players during the preseason. Class counsel estimates that the White class consists of more than 5,000 active and former NFL players, as well as numerous players who are likely to be drafted. Less than two percent of the total class objected to the terms of the original settlement. White, 822 F.Supp. P 7.2, at 1425. Less than one percent of the total class object to the amended version of the Settlement Agreement. See supra note 20. In addition, the new Collective Bargaining Agreement was ratified by over ninety- six percent of the players who voted. Based on the foregoing, the court concludes that the vast preponderance of the class supports the proposed settlement.

7.3 As a preliminary matter, the court notes that most of the objections to the amended Stipulation and Settlement Agreement and the requested findings of fact simply renew objections that have already been considered

and rejected by the court. Other than the Philadelphia Eagles, the overwhelming majority of class members who oppose the original or the amended version of the Settlement Agreement on the merits do so because: (i) one or more elements of the proposed player reservation system allegedly violate the antitrust laws, or (ii) one or more provisions of the settlement are allegedly unfair as applied to that player or group of players. The court incorporates the findings set forth in its order of April 30, 1993, concerning players' objections to the original Settlement Agreement, and makes the following additional findings. [FN56]

FN56. The court did not address most of the objections individually because many of the player-objectors have moved to join with others' objections, either in their briefs or at one or more of the hearings.

7.4 A number of objectors contend that the court must withhold its approval because various provisions of either the original Settlement Agreement, or the amended version of the Agreement, violate the antitrust laws.

7.5 The order of April 30, 1993, set forth the standard by which the court is to review the amended Settlement Agreement: In reviewing a proposed class action settlement, the Eighth Circuit has determined that the trial court does not have the privilege or duty of independently resolving the issues of fact and law 'which underlie the merits of the dispute.' White, 822 F.Supp. P 7.5, at 1425

(quoting Grunin, 513 F.2d at 123 (quotation omitted)). " 'The very purpose of compromise is to avoid the delay and expense of such a trial.' " Id. (quoting Grunin, 513 F.2d at 124 (quotation omitted)).

7.6 When evaluating the propriety of an antitrust class action settlement, the Grunin court further held that: unless the terms of the agreement are per se violations of antitrust law, we must apply a 'reasonableness under the totality of the circumstances' standard to the court's approval. Grunin, 513 F.2d at 124.

7.7 The Second Circuit applied the Grunin standard when affirming the district court's approval of the Robertson class action settlement, which involved the antitrust claims of professional basketball players. The Second Circuit held that such a settlement agreement should be approved unless the terms of the agreement are per se illegal, are illegal to a "legal certainty" or authorize future conduct that is clearly illegal. Robertson, 556 F.2d at 686 (quoting Grunin, 513 F.2d at 124).

7.8 In McNeil, this court determined that right of first refusal/compensation rules of Plan B should be evaluated under the rule of reason, rather than the per se rule. McNeil v. National Football League, 790 F.Supp. 871, 896-97 (D.Minn.1992). [FN57] In making that determination, the court observed that all of the cases to date had "applied the rule of reason rather than the per se analysis" to evaluate whether various NFL player restrictions violated the antitrust laws. Id. [FN58]

Therefore, in the absence of a full trial on the merits, it is unlikely that the proposed settlement, taken as a whole, would be deemed a per se violation of the antitrust laws because the amended Settlement Agreement would likely be subject to analysis under the rule of reason. See Robertson, 556 F.2d at 686 (court should not disapprove of settlement if "challenged practices have not been held to be per se illegal in any previously decided case"); Grunin, 513 F.2d at 124. Moreover, the Alexander court expressly approved, and the Eighth Circuit upheld, a player reservation system that was more restrictive than that set forth in the present settlement. [FN59]

FN57. The McNeil plaintiffs argued that there was "sufficient judicial experience" concerning the illegality of various player restraints "to warrant the application of the per se rule" to the challenged Plan B rules. 790 F.Supp. at 896. The court rejected that contention, concluding that it was "bound by the Mackey decision, in which the Eighth Circuit determined that the Rozelle Rule should be judged under the rule of reason", rather than the per se rule. Id. at 897. The order of April 30, 1993 noted that: if there is future litigation concerning the legality of any NFL player rules, plaintiffs' argument may be adopted by some court. This court, however, makes no ruling on the issue. White, 822 F.Supp. at 1426 n. 55.

FN58. See, e.g., Mackey v. National Football

League, 543 F.2d 606, 619 (8th Cir.1976) ("the unique nature of the business of professional football renders it inappropriate to mechanically apply per se illegality rules"); Smith v. Pro Football, Inc., 593 F.2d 1173, 1182 (D.C.Cir.1978) ("the legality of player restrictions in professional sports should be governed by the rule of reason"); Kapp v. National Football League, 390 F.Supp. 73, 82 (N.D.Cal.1974) ("in this particular field of sports league activities the purposes of the antitrust laws can be just as well served (if not better served) by the basic antitrust reasonableness test as by the absolute per se test sometimes applied by the courts in other fields"), aff'd in part and dismissed in part on other grounds, 586 F.2d 644 (9th Cir.1978), cert. denied, 441 U.S. 907, 99 S.Ct. 1996, 60 L.Ed.2d 375 (1979).

FN59. Some objectors argue that the Franchise Player provisions violate the antitrust laws based on their contention that the Franchise Player rules are as restrictive as the right of first refusal/compensation rules of Plan B. The McNeil jury found that the Plan B rules, which permitted the restriction of thirty-seven players per team, were more restrictive than reasonably necessary. McNeil, 1992 WL 315292, at *1 (special verdict form). The Franchise Player provisions, however, are narrower in scope because they permit restriction of, at most, only one player per team per year. White, 822 F.Supp. P 7.13, at 1426-27 & n. 59. Moreover, only ten teams actually

designated Franchise Players for the 1993 season, likely as a result of the substantial tenders that were required for such designation under the terms of the original Settlement Agreement. Id. at 1427 n. 57. The court therefore rejects the contention that the Franchise Player rules must be altered because they are as restrictive as the Plan B rules. The court further concludes that the objectors' reliance on the McNeil verdict may be misplaced. As previously discussed, the McNeil verdict has never been appealed, and the case raises numerous novel and difficult legal issues that, if resolved in defendants' favor, could preclude players' ability to establish liability and damages. See supra P 6.2(a) (setting forth those issues).

The order of April 30, 1993, noted that: It is also significant that all aspects of the new free agency system contained in the Settlement Agreement ... will likely be included in a new collective bargaining agreement, under which such provisions would be exempt from antitrust law as a result of the nonstatutory labor exemption. White, 822 F.Supp. P 7.16, at 1428. As previously discussed, the free agency system set forth in the amended Settlement Agreement has been incorporated almost verbatim in the new Collective Bargaining Agreement, and any such rules would therefore be exempt from antitrust challenge during the express term of the new Collective Bargaining Agreement. See infra s X (reaffirming that conclusion). Accordingly, the court overrules any objections concerning

the legality of the amended Settlement Agreement under the antitrust laws, and concludes that the amended Settlement Agreement, as a whole, is not per se illegal. Cf. White, 822 F.Supp. P 7.29(d), at 1432 (original Settlement Agreement is not per se illegal). [FN60]

FN60. The court noted in its order of April 30, 1993, that: the revised player employment rules set forth in the Settlement Agreement constitute a new and unique approach to player employment in the NFL. Class counsel and the NFLPA believe that the entire Agreement will benefit the overwhelming majority of the players in the NFL, and raise salaries throughout the league. Defendants believe that the provisions challenged by various objectors, including the college draft, the rules concerning modified free agency, the Franchise and Transition Player provisions, the Final Eight Plan and the salary cap, are essential for the maintenance of competitive balance, quality of play and franchise stability. White, 822 F.Supp. P 7.12, at 1426 (footnote omitted). Class counsel and the named plaintiffs believe that none of the player movement or employment rules set forth in the amended Settlement Agreement bear any relation to competitive balance, the quality of play or franchise stability. The court, however, need not resolve this dispute, but rather notes that the existence of the dispute, as well as the parties' agreement to various settlement provisions, such as the Franchise and Transition Player rules, the College Draft, the Entering Player Pool,

the veteran free agency rules, the Final Eight Plan, and the Guaranteed League-Wide Salary, Salary Cap, and Minimum Team Salary rules, merely demonstrate that the settlement was negotiated at arm's length and in good faith. The court will therefore not second-guess the parties' hard-bargained agreement where the amended Settlement Agreement itself is not, as a whole, illegal per se.

7.9 As with the original Settlement Agreement, various objectors ask the court to disapprove of the entire amended Settlement Agreement because of one or two provisions. Alternatively, they ask the court to strike or revise those provisions before approving the terms of the amended settlement.

7.10 In Evans v. Jeff D., the Supreme Court determined that when a district court evaluates the settlement of a class action: Rule 23(e) does not give the court the power, in advance of trial, to modify a proposed consent decree.... The options available to the District Court [a]re essentially the same as those available to respondents: it could have accepted the proposed settlement; it could have rejected the proposal and postponed the trial to see if a different settlement could be achieved; or it could have decided to try the case. Evans v. Jeff D., 475 U.S. 717, 726-27, 106 S.Ct. 1531, 1537, 89 L.Ed.2d 747 (1986).

This court has held that: in acting to protect the interests of the class when reviewing a settlement, the court

cannot rewrite or modify the terms of the agreement.... The settlement must be approved or disapproved as a whole. Welsch, 667 F.Supp. at 1289-90 (citations omitted). Another judge in this district has similarly ruled that: [a]lthough the court must act to protect the interests of the class when reviewing the proposed settlement, the court also recognizes that it is limited in its ability to change that agreement. The proposed settlement must stand or fall as a whole.... The court is not to dictate or rewrite the terms of the proposed agreement. Holden, 665 F.Supp. at 1406 (citations omitted).

Applying that standard, this court previously determined that: even if it were sympathetic to objections directed at one or more provisions of the Settlement Agreement, the court may not pick and choose which provisions to approve and which to disapprove. White, 822 F.Supp. P 7.10, at 1426.

7.11 At least one objector, Paul Gruber, contends that by seeking approval of the proposed amendments to the original version of the Stipulation and Settlement Agreement, the parties are improperly asking the court to pick and choose which provisions to approve or disapprove. He argues that if the parties have the right to make such a request, the objectors must also have that right.

The parties, however, do not ask the court to pick and choose among various provisions, but instead seek court approval of the entire amended Stipulation and Settlement Agreement. The parties are thus asking the court to

approve their own agreement to amend the original Settlement Agreement, a situation which is distinguishable from that presented when an objector asks the court, on its own initiative, to modify or rewrite the terms of the parties' agreement. It is entirely appropriate that the parties seek court approval of an amendment to their own settlement agreement. See, e.g., Liddell v. Board of Educ., 867 F.2d 1153, 1155 (8th Cir.1989) (district court had authority to approve proposed amendment to settlement agreement that modified the terms of the original settlement to provide the parties with additional time to meet certain obligations); Harris v. Reeves, 761 F.Supp. 382, 394-402 (E.D.Pa.1991) (approving stipulation and agreement that revised and superseded an earlier settlement agreement which had been entered as a consent order); cf. Bridgeman v. National Basketball Ass'n, Civ. No. 87-4001, Transcript at 13 (D.N.J. Sept. 24, 1990) (analyzing whether proposed amendment to the Bridgeman NBA settlement agreement "should be approved as fair, reasonable and adequate"). As previously discussed, however, it is improper for the court, on its own initiative or at the request of an objector, to rewrite or modify the parties' agreement before approving it. See Evans v. Jeff D., 475 U.S. at 726-27, 106 S.Ct. at 1537; Welsch, 667 F.Supp. at 1289-90) ("the court cannot rewrite or modify the terms of the agreement"); Holden, 665 F.Supp. at 1406 ("[t]he court is not to dictate or rewrite the terms of the proposed settlement"); supra P 7.10. The court therefore rejects Mr. Gruber's contention.

7.12 If the court concludes that the amended Settlement Agreement, as a whole, is fair, reasonable and adequate to the class, its inquiry is ended and it should approve the entire settlement.

7.13 When evaluating the original Settlement Agreement, the court determined that: after carefully considering all of the objections that call into question a specific provision or provisions of the Settlement Agreement, the court nonetheless concludes that the Agreement, as a whole, is fair, reasonable and adequate to the class. Accordingly, the court will not deny final approval on the basis of those objections. White, 822 F.Supp. P 7.11, at 1426.

7.14 After analyzing the objections to various provisions of the amended Settlement Agreement, the court finds that the amended Agreement, taken as a whole, is also fair, reasonable and adequate to the class. Therefore, the court will not withhold final approval of the amended Settlement Agreement on the basis of the objections to various individual provisions.

7.15 Although the court must analyze the amended Settlement Agreement as a whole, the following specific objections to the amended Settlement Agreement have been made.

7.16 Various players continue to object to the Franchise Player provisions, arguing that the amended rules are no more reasonable than those set forth in the original Settlement Agreement. In approving the original Settlement

Agreement, the court made the following findings concerning the Franchise Player provisions contained therein: (i) a club invoking the Franchise Player provisions must make an extraordinarily high salary tender to any player so designated; (ii) such required tenders act merely as a floor and not a ceiling on the designated player's salary; and (iii) the Franchise Player provisions are extremely limited in scope. Id. P 7.13, at 1426-27 (footnotes omitted). The court further found that the minimum tender for Franchise Players "protects class members to the extent that it deters teams from making such designations." Id. at 1427 n. 57. The court concluded that "objections to the Franchise Player provisions provide no basis on which to reject the proposed settlement." Id. P 7.13, at 1427.

The court also concludes that the objections to the amended Franchise Player rules provide no basis for disapproving the entire amended Settlement Agreement. As previously discussed, the amended rules provide 1993 Franchise Players with additional benefits, either by increasing the minimum tenders required for such designations [FN61] or by affording players greater freedom to negotiate with other clubs. [FN62] See supra P 6.4(a) (detailing additional benefits).

FN61. Under the amended rules, the minimum tender is based on the average of the top five salaries at that player's position for this year, rather than 1992, thereby

permitting 1993 Franchise Players to participate in the increased salaries that other players have obtained as a result of the introduction of free agency into the marketplace. Moreover, as previously noted, that change renders moot any objection that the 1993 Franchise Players will be deprived of any increase in the marketplace for the current year, and will always be one year behind other players for purposes of participating in market-wide salary increases. See White, 822 F.Supp. P 7.13, at 1426-27 & n. 60.

FN62. If a Franchise Player receives a tender for the average of the five highest salaries for players at his position as of the prior year, that player is free to negotiate a player contract with any club, subject to a right of first refusal and draft choice compensation of two first round draft picks. This amendment eliminates the blanket prohibition against movement set forth in the prior version of the Franchise Player provisions.

Players who are designated as Franchise Players in future years will similarly benefit under the amended rules, either by receiving upgraded tenders or new opportunities to market their services to other teams subject to a right of first refusal and draft choice compensation. See supra P 4.1(a) (detailing provision as it applies to future years). [FN63]

FN63. As previously discussed, recent marketplace

evidence also confirms that Franchise Players will likely benefit by receiving significant salary increases. See supra P 6.4(a).

Based on the foregoing, the court concludes that the amendment to the Franchise Player rules serves only to provide additional benefits to the players so designated, and thus provides no basis for disapproving the entire amended Settlement Agreement.

7.17 Other class members object to the expansion related amendments to the college draft and entering player pool provisions, arguing that the change will result in the restriction of a greater number of college, and possibly veteran, players. [FN64] Those amendments, however, will facilitate expansion in the NFL, thereby providing a substantial number of additional jobs for both college and other players. [FN65] The amendments afford further benefit to players by creating an exception to the Salary Cap for bonuses that the NFL has agreed to provide for veteran players under contract who are drafted by expansion clubs. The court further notes that none of the objections to the expansion related amendments have been asserted by, or on behalf of, college or other future NFL players, the group most likely to be affected by the changes. [FN66] Based on the foregoing, the court overrules any objections to the expansion related amendments based on the contention that those amendments impermissibly restrict a greater number of players.

FN64. The court previously overruled all objections to the entering player pool and college draft provisions as set forth in the original Stipulation and Settlement Agreement. See White, 822 F.Supp. P 7.17, at 1428.

FN65. Defendants also contend that the amendments will afford new teams greater access to the available talent, thereby increasing the likelihood that such teams will become more competitive in their early years of play. Plaintiffs dispute that contention, and the court makes no finding concerning defendants' assertion.

FN66. Although sixteen college players objected to the original Stipulation and Settlement Agreement, see White, 822 F.Supp. at 1398 & n. 12, none of those players, or any other college players, filed objections to the pending motions to amend the Settlement Agreement and for further factual findings.

7.18 Other objectors contend that Proposed Amendment No. 3, which clarifies the rules regarding what type of conditional salary must be matched in order to retain a player subject to a right of first refusal, will reduce player movement, thereby harming the class and violating the antitrust laws. There is no evidence to support the contention that the clarifications will impede player movement, and the court finds that it is unclear what effect, if any, the proposed amendment will have on any such

movement. Moreover, as previously discussed, it is not for the court to determine, in the absence of a per se violation of the antitrust laws, the antitrust reasonableness of a specific provision of the Settlement Agreement. See supra PP 7.6-7.8. Finally, the court concludes that the amendment will benefit class members to the extent that such clarifications may increase the efficiency of the offer sheet process and eliminate the need for numerous future arbitrations, as well as additional uncertainty and delay. Accordingly, the court overrules the objections to the offer sheet clarifications set forth in Proposed Amendment No. 3.

7.19 The court stated in the order of April 30, 1993, that it had: considered objections to the salary cap provisions, and concludes that such objections do not warrant disapproval of the settlement. [T]he salary cap must not be viewed in isolation, but rather, in connection with the entire agreement accepted by class counsel, including the liberalized free agency provisions and the minimum revenue guarantees that would accompany the "triggering" of the salary cap provisions. White, 822 F.Supp. P 7.16, at 1428; see id. PP 4.3-4.5, at 1413-14 (summarizing Salary Cap provisions). Various objectors contend that Proposed Amendment No. 4, which provides a mechanism for Salary Cap adjustments in the event that player benefit costs increase, affords improper payments or other consideration to the NFLPA.

The new Collective Bargaining Agreement provides the NFLPA with greater discretion in regulating the

allocation of total revenues going to players in the form of benefits and salaries. [FN67] Proposed Amendment No. 4 provides that the "Projected Benefits" figure under the Settlement Agreement, on which the Salary Cap and Minimum Team Salary are based, may be immediately recalculated to reflect any change in Projected Benefits, thereby increasing the money available under the Salary Cap for players' salaries. The court finds that the proposed amendment will protect players in the event that projected player benefit costs, which are substantially increased as a result of the much larger benefits provided under the Collective Bargaining Agreement, unexpectedly increase as a percentage of Defined Gross Revenues at a time when the Salary Cap is in effect. Without such a mechanism, unexpected future increases in benefit costs (as a percentage of Defined Gross Revenues) could hold down the Salary Cap to levels that are detrimental to class members. The amendment does not provide the NFLPA with any payments or other consideration, but merely affords a necessary and appropriate mechanism to effectuate the NFLPA's increased discretion under the new Collective Bargaining Agreement. The court therefore finds that the change clearly benefits all class members, and overrules the objections to Proposed Amendment No. 4.

FN67. Under the new Collective Bargaining Agreement, the NFLPA has the right to: (1) contest the NFL's Projected Benefits Costs, see Collective Bargaining

Agreement, art. XLVI, s 4; and (2) reduce player benefit payments to a level not less than seven percent of Projected Defined Gross Revenues. Id. s 1.

7.20 Various players object to Proposed Amendment No. 5, which allows the NFL to terminate the Stipulation and Settlement Agreement in the event that the players fail to ratify a new collective bargaining agreement. As previously set forth, on June 18, 1993, the NFLPA announced the ratification of the new Collective Bargaining Agreement. The amendment will have no impact on class members, therefore the court overrules as moot all objections to Proposed Amendment No. 5.

7.21 The court has also considered the objections to Proposed Amendment No. 6, which provides a partial credit to defendants in the calculation of Defined Gross Revenues to prevent double counting of certain additional revenues that may be provided to the NFLPA under the terms of the licensing litigation settlement. [FN68] As discussed more fully infra, the court rejects any claim that the settlement of the licensing litigation, in combination with Proposed Amendment No. 6, violates federal labor law. See PP 7.27-7.31. The court further concludes that the benefits to NFL players as a result of the licensing litigation settlement outweigh any potential reduction in the Salary Cap, and provide class members with a net benefit of more than $20 million dollars. See supra P 6.4(f) (setting forth basis of this conclusion); Allen Supp.Decl. PP 11-15; Kessler

Decl. PP 22-23. The court therefore overrules any player objection to Proposed Amendment No. 6.

FN68. This section will focus on players' objections to Proposed Amendment No. 6. Objections asserted by the Philadelphia Eagles will be discussed below. See infra PP 7.22-7.33.

B. The Philadelphia Eagles' Objections to the Motions to Amend and Approve the Settlement Agreement and to the Wording of the Proposed Consent Judgment

7.22 One of the defendants, the Philadelphia Eagles, opposes final approval of the amended Settlement Agreement and the motion for further factual findings, renewing its objections to the original Stipulation and Settlement Agreement. [FN69] The Eagles also object to the wording of the proposed Final Consent Judgement. (See Letter from Peter S. Hendrixson to court dated July 19, 1993). The court incorporates the findings set forth in its order of April 30, 1993, concerning the Eagles' objections, and makes the following additional findings. See White, 822 F.Supp. PP 7.19-7.27, at 1429-31.

FN69. The Eagles argued that the court should deny approval of the original Settlement Agreement because: (i) the proposed settlement of related litigation concerning players' licensing rights is unlawful; (ii) the NFLPA's role in settlement negotiations was in violation of the National Labor Relations Act; and (iii) the Settlement Agreement

improperly requires the court to issue an advisory opinion concerning the scope of the nonstatutory labor exemption. White, 822 F.Supp. P 7.19, at 1429.

7.23 In its order of April 30, 1993, the court found that the Eagles lacked standing to assert such objections for the following reasons: (1) the Settlement Agreement is not per se illegal, and thus the Eagles are unable to demonstrate any legal prejudice [FN70]; (2) the Eagles delegated complete authority to the NFL Management Council to settle the case and, pursuant to the Articles of Association and Bylaws of the Council, are bound by the Council's actions, including its unanimous approval of the present settlement; (3) the Eagles have breached their obligation under the Settlement Agreement "not [to] take any action to delay or hinder" court approval of the Settlement Agreement; and (4) the Eagles have violated the court's order of February 26, 1993, which required all defendants to abide by the terms of the Settlement Agreement (including the provisions discussed immediately above) pending the court's final ruling on the Settlement Agreement. [FN71] White, 822 F.Supp. P 7.20, at 1429-30.

FN70. See, e.g., Alumax Mill Prods., Inc. v. Congress Fin. Corp., 912 F.2d 996, 1001-02 (8th Cir.1990) (a nonsettling defendant has standing to object to a settlement only if it can demonstrate some form of legal

prejudice).

FN71. White, No. 4-92-906, slip op. at 5 (D.Minn. Feb. 26, 1993) (ordering defendants to abide by terms of Settlement Agreement).

At the final fairness hearing on July 7, 1993, counsel for the Eagles was afforded an opportunity to reargue the issue of standing, but failed to do so. White v. National Football League, Transcript of Final Fairness Hearing on the Pending Motions, at 71-84, 105 & 124-25 (July 7, 1993). The court therefore affirms, for the reasons previously set forth, that the Eagles lack standing to object to the amended Settlement Agreement, the requested findings of fact and the proposed Final Consent Judgment.

7.24 Despite that conclusion, the court will address the merits of Eagles' objections concerning the pending motions to ensure a complete record. [FN72] The principal thrust of the Eagles' renewed objections involves a challenge to the legality, under the federal antitrust and labor laws, of the related settlement between the NFL and the NFLPA of various lawsuits, and other disputes and claims, arising out of their respective licensing activities. The licensing settlement had not been consummated as of April 16, 1993, the date of the final fairness hearing on the original Settlement Agreement. In the order of April 30, 1993, the court found that it was under no obligation, pursuant to Federal Rule of Civil Procedure 23, to evaluate the terms of

the proposed licensing settlement, to which the original Stipulation and Settlement Agreement merely referred. The court reasoned that such an evaluation was irrelevant to the court's inquiry concerning whether the proposed Settlement Agreement was fair, reasonable and adequate to the class, and declined to address the merits of the Eagles' objections concerning the legality of the proposed licensing settlement. White, 822 F.Supp. P 7.22, at 1430.

FN72. The court similarly reached the merits of the Eagles' objections to the original Stipulation and Settlement Agreement. See White, 822 F.Supp. at 1429 n. 67, PP 7.21-7.27, at 1430-31.

The Eagles contend that the court must now address the arguments concerning the legality of the licensing settlement as a result of Proposed Amendment No. 6 to the White Settlement Agreement, which provides for an adjustment in Defined Gross Revenues to reflect any payments that the NFL may make to the NFLPA pursuant to the terms of the licensing settlement.

The parties agreed to the changes set forth in Proposed Amendment No. 6 in order to fully and fairly implement the settlement of the related licensing litigation, thereby effectuating a primary goal of the present Settlement Agreement, labor and litigation peace. Unlike the situation that existed when the parties sought approval of the original Stipulation and Settlement Agreement, which merely

referred to a possible settlement of the licensing litigation, the contemplated changes to the Settlement Agreement set forth in Proposed Amendment No. 6 have created a direct relationship between the settlement of the present action and the fully executed settlement of the licensing cases. Accordingly, the court now deems it necessary and appropriate to review various terms of the licensing settlement, at least to the extent that those terms bear a relationship to the motions pending before the court. [FN73]

FN73. The court thus alters its prior determination that all matters related to the settlement of the licensing litigation are "outside of the purview of this court". See Transcript of Hearing for Final Approval of the Original Settlement Agreement at 143 (D.Minn. Apr. 16, 1993). The court notes, however, that in addressing various matters concerning the licensing settlement, the court is not thereby "deciding whether [those cases] should be settled or not, or the terms of how that should be." Id.

7.25 The Eagles first object to the terms of the licensing litigation settlement and the corresponding amendment to the White Settlement Agreement, Proposed Amendment No. 6, because they allegedly harm NFL players. As a preliminary matter, the court notes the incongruity of the Eagles' contention that the changes to the calculation of Defined Gross Revenues are detrimental to players' interests. [FN74] The terms of the amended

Settlement Agreement, including that amendment, have been incorporated into a new Collective Bargaining Agreement that has been overwhelmingly ratified by NFL players, providing strong evidence of the fairness and adequacy of the White settlement. Proposed Amendment No. 6 must also be evaluated in light of the licensing settlement, the net effect of which is to provide more than $20 million dollars in additional benefits to NFL players. See supra PP 6.4(f), 7.21.

FN74. It seems highly unlikely that the Eagles' motivation stems from any genuine concern for players' interests. See White, 822 F.Supp. P 7.21, at 1430 (questioning the plausibility of the Eagles' objections in light of the evidence that the team is merely seeking additional draft selections as compensation for the loss of various players' services).

7.26 The court also rejects the Eagles' contention that the licensing payments will impermissibly enrich the NFLPA at the players' expense. The court finds that the NFLPA's interest in settling the licensing litigation does not conflict with the players' interests. [FN75] The court further finds that the payments to the NFLPA pursuant to the licensing litigation settlement will benefit players, either by direct payment of such funds to the players, or by helping to fund the NFLPA's collective bargaining activities and its obligation to administer and ensure compliance with

the Settlement Agreement. See Allen Supp. Decl. P 12. The court therefore rejects the Eagles' claim that the payments to the NFLPA under the terms of the licensing litigation settlement are contrary to the players' interests.

FN75. The court previously concluded that class counsel had no conflict in the present case as a result of any role in the licensing litigation, and that any alleged conflict had been rectified by class counsel's withdrawal from the representation of the NFLPA in the licensing litigation. See White, 822 F.Supp. at 1405 n. 29, 1430 n. 68 (citing Quinn Supp.Aff. PP 38-39).

Based on the foregoing, the court overrules the Eagles' objections to the extent that they rest on any alleged harm to class members' interests.

7.27 The court also finds no merit to the Eagles' contention that any payments provided by the NFL to the NFLPA in the licensing litigation settlement, and the corresponding amendment to calculation of Defined Gross Revenues under the White Settlement Agreement, violate section 302 of the Labor Management Relations Act, 29 U.S.C. s 186. Section 302(a) and (b) of that Act generally prohibit the payment of money, or any "other thing of value" by an employer to an employee representative. 29 U.S.C. s 186(a)-(b).

The general prohibition of section 302 is: aimed at forestalling practices Congress considered injurious to the

collective bargaining process such as bribery of employee representatives by employers, extortion by employee representatives, and the potential abuse of power by union officials armed with sole control of welfare funds. N.L.R.B. v. United Bhd. of Carpenters & Joiners, 531 F.2d 424, 427 (9th Cir.1976) (citing Arroyo v. United States, 359 U.S. 419, 79 S.Ct. 864, 3 L.Ed.2d 915 (1959)); see also United Steelworkers v. United States Gypsum Co., 492 F.2d 713, 734 (5th Cir.) ("the purpose of [section] 302(a) is to protect employers from extortion and to insure honest uninfluenced representation of employees"), cert. denied, 419 U.S. 998, 95 S.Ct. 312, 42 L.Ed.2d 271 (1974).

7.28 The general prohibition is subject to express statutory exceptions set forth in section 302(c) of the Act, 29 U.S.C. s 186(c). Congress did not intend that the general prohibition prevent a union or employee representative from vindicating its legal rights as to an employer, and thus enacted the settlement exception, section 302(c)(2), which exempts adjudicated awards and judgments, and also payments arising out of the voluntary settlement of claims and disputes, from the general prohibitions of the Act. The settlement exception specifically excludes: the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress. 29 U.S.C. s 186(c)(2).

7.29 None of the parties or objectors, including the Eagles, dispute that the licensing litigation settlement resolves a wide range of genuine legal controversies between the NFL and the NFLPA, in which substantial economic interests were at stake. The licensing cases were filed several years before any global settlement appeared to be possible, and were strenuously litigated by the NFLPA long before it again became the players' union. [FN76] For example, in one case the parties conducted approximately fifty depositions and extensive pretrial preparations. See Allen Supp.Decl. PP 9-11. The suits involved antitrust, tort, contract and other claims in nearly a dozen lawsuits all over the country, and sought injunctive relief against the NFL defendants, millions of dollars in treble damages and punitive damages of at least $10 million.

FN76. See White, 822 F.Supp. P 4.13, at 1415-16 & n. 35 (detailing the licensing litigation).

It is also undisputed that there are legitimate claims between the NFLPA and the NFL concerning whether the NFLPA has a valid trademark for the "NFL Players" logo. Those claims put at issue the value of defendants' other intellectual property rights, which last year alone provided between $55-60 million in revenues. See Declaration of Neil Austrian PP 4-8 (July 2, 1993) ("Austrian Decl."). As part of the global settlement, the NFLPA has agreed to withdraw its pending application to register "NFL Players"

as a trademark, an application that NFL Properties has opposed in a proceeding before the United States Patent and Trademark Office. The NFLPA has also agreed to refrain from marketing athletic wear bearing NFL team colors and city designations, for which the NFL was prepared to seek injunctive relief. Id. P 9.

There is also no evidence of fraud or duress in the settlement process, and no reasonable view of the facts suggests any improper influence. Based on the foregoing, the court finds that the licensing litigation settlement resolves a wide range of legitimate disputes between the NFL and the NFLPA. The court further concludes that the settlement exception set forth in section 302(c)(2) clearly applies to any payments made to the NFLPA pursuant to the licensing litigation settlement because such consideration is to be paid "in compromise, adjustment, settlement, or release of" bona fide claims. 29 U.S.C. s 186(c)(2). Accordingly, the Eagles' contention that the payments constitute a violation of section 302 is without merit. See, e.g., Washington Post v. Washington-Baltimore Newspaper Guild, Local 35, 787 F.2d 604, 607 (D.C.Cir.1986). [FN77]

FN77. The court also concludes that the sole case cited by the Eagles in support of their contention that the section 302(c)(2) exception does not apply, International Longshoreman's Ass'n v. Seatrain Lines, Inc., 326 F.2d 916 (2d Cir.1964), is inapposite. That case held that the

section 302(c)(2) exception did not apply to a payment that was made in response to a union's collective bargaining demands, and thus did not arise out of the settlement of a genuine claim or dispute concerning the parties' legal rights. Id. at 919-20.

7.30 The Eagles' section 302 objection to the licensing settlement, and the corresponding amendment to the White Settlement Agreement, is premised on the contention that the value of the consideration flowing from the NFL defendants to the NFLPA is excessive; in essence, that the licensing settlement is a "bad deal" for the NFL. However, in the absence of fraud or duress, section 302(c)(2) does not require the court to examine the actual terms of a settlement of legitimate claims for purposes of determining whether such consideration is "fair." [FN78]

FN78. The existence of a separate statutory exemption, set forth in section 302(c)(3), 29 U.S.C. s 186(c)(3), for payments arising out of the "sale or purchase of an article or commodity at the prevailing price in the regular course of business," suggests that the court is to scrutinize only those payments made pursuant to section 302(c)(3), not to the settlement exception set forth in section 302(c)(2), for the fairness of the exchange.

Moreover, even if it were required to assess the fairness of the exchange, the court rejects the Eagles' claim

that the licensing settlement is excessive. In making this determination, the court relies on the declaration of Neil Austrian, President and Chief Operating Officer of the NFL, which describes the substantial benefits that the NFL believes that it has received in the licensing settlement, [FN79] and the declaration of Commissioner Paul Tagliabue, which states that Mr. Braman, the Eagles' owner, has made remarks indicating strong support of the terms of the proposed licensing settlement. See Austrian Decl. PP 8, 10-11; Declaration of Paul Tagliabue P 39 (April 12, 1993); see also Allen Supp.Decl. P 11 (setting forth benefits received by NFL in the settlement of the licensing litigation).

FN79. Thus, the payments to the NFLPA may also be exempt under the sale at fair market value exception set forth in section 302(c)(3), 29 U.S.C. s 186(c)(3).

7.31 Finally, the court rejects various factual assertions underlying the Eagles' challenge under the federal labor laws. For example, the Eagles claim that the value of the group player licensing rights transferred to the NFLPA "may exceed $200 million", a statement based on the Eagles' belief that "NFL player licensing is a ... $20 million per year business." The only evidence before the court indicates, however, that NFL Properties' group licensing business actually lost $5 million in the past fiscal year, 1992. Austrian Decl. P 11.

The Eagles further assert that the NFL has agreed to

make an outright payment of $35 million to the NFLPA over the seven-year term of the settlement. That assertion, however, mischaracterizes the terms of the parties' agreement, under which the NFL is to pay the NFLPA $10 million to settle the antitrust and business interference claims asserted in the New York licensing lawsuit. See Licensing Settlement Agreement P 4 (May 6, 1993). Over the remaining years of the settlement agreement, the NFL will pay the NFLPA an additional sum of approximately $14.7 million. Id. P 5. The NFL has also agreed to guarantee an additional amount, up to approximately $20.3 million over the course of the settlement agreement, in the event that the NFLPA does not earn that amount from the Pro-Line and Game Day licenses that have been assigned to it under the terms of the licensing settlement. Id. P 12. If, however, the NFLPA earns the minimum revenues from the two card licenses, the NFL is not required to make any further payments. Id.

Accordingly, the court rejects the foregoing assertions of fact underlying the Eagles' federal labor law challenge.

7.32 The Eagles also challenge the legality of the licensing settlement under the federal antitrust laws, contending that the NFL's agreement to limit its future role concerning player group licensing rights constitutes an illegal division of markets.

The court first rejects the Eagles' claim that the NFL has agreed to discontinue its player licensing business and

"to stop competing with the NFLPA." Under the terms of the licensing settlement agreement, and pursuant to the definition of group player licensing rights in the new Collective Bargaining Agreement, the NFL, through NFL Properties, remains free to license Quarterback Club members, individual players and groups of less than six players. Austrian Decl. P 10; Collective Bargaining Agreement, art. V, s 4. The court thus concludes that the Eagles' "division of markets" claim is without factual foundation.

Even if the Eagles' factual allegations were true, the court finds that its antitrust challenge to the licensing settlement is fatally flawed. The NFL defendants' agreement to limit their ability, as employers, to individually negotiate with players for purposes of securing group licensing rights is expressly incorporated in the new Collective Bargaining Agreement. See id. [FN80] Although the legality of the Collective Bargaining Agreement is not directly before the court (except to the extent that provisions of the Collective Bargaining Agreement may incorporate the terms of the amended Settlement Agreement), the court notes that the Eagles' antitrust challenge would fail as a result of the application of the nonstatutory labor exemption. In Mackey v. National Football League, the Eighth Circuit determined that the nonstatutory labor exemption applies in the context of professional football to collectiveiy bargained provisions that: (1) primarily affect the parties to the collective

bargaining agreement; (2) concern a mandatory subject of collective bargaining; and (3) are the product of bona fide arm's length bargaining. 543 F.2d at 614.

FN80. That limitation is also included in paragraph 4 of the collectively bargained NFL Player Contract.

Examining those factors, the court first finds that the provisions at issue primarily affect the parties to the Collective Bargaining Agreement. All NFL players may choose to opt out of the provisions that purport to assign their group licensing rights to the NFLPA by simply striking the applicable paragraph of their NFL player contracts. That opt-out right ensures that third parties remain entirely free to compete with the NFLPA for players' group licensing rights.

The court further concludes that the provisions concern a mandatory subject of collective bargaining because they "pertain" to "the terms or conditions of [players'] employment" by limiting defendants' ability, as employers, to negotiate individually with players for certain of their publicity rights. See id. at 615. [FN81] The court also finds that the undisputed evidence, including the affidavits and declarations of the principals involved in negotiating the new Collective Bargaining Agreement, make clear that the challenged provisions were the product of bona fide arm's length negotiations. The court therefore concludes that the Eagles' antitrust challenge fails because

the nonstatutory labor exemption protects defendants' agreement to limit their ability to individually negotiate with players for purposes of securing group licensing rights.

FN81. Defendants also request that the court find that the players' licensing rights "are an emolument of NFL employment". Plaintiffs oppose that request. (Letter from Jeffrey L. Kessler to the court dated July 20, 1993). The court concludes that such a finding is unnecessary for purposes of determining whether the nonstatutory labor exemption applies to the provisions in the Collective Bargaining Agreement concerning players' licensing rights, and thus declines to make any ruling on that issue.

7.33 Finally, the court rejects the Eagles' request that the court postpone final approval of the amended Settlement Agreement in order to permit discovery. The court previously determined that: class members have been provided with, or had available to them, more than adequate information with which to analyze the fairness and reasonableness of the [original] settlement. White, 822 F.Supp. P 7.18, at 1429. The court finds that class members have also been provided with, or had access to, adequate information with which to analyze the pending motions to approve the amended Settlement Agreement and for further factual findings. The court also concludes that the record reflects no evidence of collusion. See id. P 2.19, at 1407; White, Transcript of Preliminary Approval

Hearing for the Original Settlement Agreement at 82-84 (Feb. 26, 1993) (finding no evidence of collusion and concluding settlement was product of arm's length negotiations). Accordingly, the court denies any request to postpone final approval of the amended Settlement Agreement or the issuance of further findings to permit discovery. See, e.g., In re Domestic Air Transp. Antitrust Litig., 144 F.R.D. 421, 424 (N.D.Ga.1992) (absent evidence of collusion, objectors have no right to seek discovery concerning the negotiations of a class action settlement) (citing Mars Steel Corp. v. Continental Illinois Nat'l Bank & Trust Co., 834 F.2d 677, 684 (7th Cir.1987)).

7.34 After carefully considering all of the objections to the amended Settlement Agreement, the court finds that it provides even greater benefits to class members than the original Settlement Agreement. Accordingly, the court concludes that the amended Settlement Agreement is fair, reasonable and adequate to the class, and, for the reasons previously set forth, overrules all of the objections to the motions to amend the Settlement Agreement and to approve the amended Agreement.

7.35 Based on the foregoing, the court makes the following additional findings of fact and conclusions of law: (a) The terms of the amended Stipulation and Settlement Agreement fundamentally modify the NFL's rules, policies and practices regarding veteran player movement and employment. The settlement also fundamentally modifies by

agreement the college draft, the NFL Player Contract, and various other terms and conditions of NFL player employment. (b) The revised player mobility and employment rules represent a successful effort by NFL players to eliminate Plan B, and to bring about substantial modifications in the principles relating to veteran player transfers. (c) Under Eighth Circuit law, when evaluating the amended Settlement Agreement, it is unnecessary for the court to determine whether every provision of the settlement, if adopted outside a settlement context and made subject to a trial on the merits, would be deemed reasonable after a full rule of reason inquiry. In fact, the court should not make such inquiry. (d) The amended Settlement Agreement, as a whole, is not per se illegal. (e) The settlement of the licensing litigation does not constitute an agreement not to compete in violation of the antitrust laws. (f) The provisions of the new Collective Bargaining Agreement related to group player licensing are exempt from antitrust scrutiny during the express term of the Collective Bargaining Agreement pursuant to the nonstatutory labor exemption. (g) Transfers that are made to the NFLPA pursuant to the settlement of the licensing litigation do not violate section 302 of the Labor Management Relations Act, 29 U.S.C. s 186, because such transfers are made in "compromise, adjustment, settlement, or release of" bona fide claims, and thus are exempt from the application of that statute. See 29 U.S.C. s 186(c)(2).

VIII. MOTIONS TO INTERVENE

8.1 The court incorporates all of the findings set forth in its April 30, 1993, order concerning the various motions to intervene, and makes the following additional findings.

8.2 Various objectors contend that the court's partial grant of various motions to intervene in its order of April 30, 1993, constitutes an implicit finding that the named plaintiffs inadequately represent absent class members. (See Letter from Robert A. Brunig to the court dated April 30, 1993). Because its determination is not the final word on the propriety of the present settlement, the court partially granted various motions to intervene solely for the purpose of providing certain objectors with the right to appeal. [FN82] The Eighth Circuit has expressly adopted that approach to permit all actions to be consolidated in one case. See Croyden Assocs. v. Alleco, Inc., 969 F.2d 675, 678-80 (8th Cir.1992) (unnamed class member must move to intervene in order to preserve right to appeal), cert. denied, --- U.S. ----, 113 S.Ct. 1251, 122 L.Ed.2d 650 (1993). The court's decision to partially grant certain motions to intervene does not indicate any ruling concerning the adequacy of representation or the validity of any objections, but merely serves as a mechanism to promote judicial economy by channeling all objections to one appellate court. See id.

FN82. The order of April 30, 1993 specifically provided that: the court denies all motions to intervene

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 9105 Sunset Boulevard, West Hollywood, California 90069; that on April 18, 1995, I served the within *Appendix For Petition For Writ of Certiorari (Volume II of IV)* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.E.
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I declare under penalty of perjury that the foregoing is true and correct. Executed on April 18, 1995, Los Angeles, California.

Betty J. Malloy
(*Original Signed*)